

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
LOS ANGELES SESSION
DECEMBER 6 and 7, 2005**

(SECOND AMENDED)

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Ronald Reagan State Office Building, 300 South Spring Street, 3rd Floor, North Tower, Los Angeles, California, on December 6 and 7, 2005.

TUESDAY, DECEMBER 6, 2005—2:00 P.M.

- (1) S112621 Evans v. City of Berkeley (*Epstein, J., assigned justice pro tempore*) (to be called and continued to the January 10, 2006 oral argument calendar)
- (2) S123203 Rusheen v. Cohen (*Flier, J., assigned justice pro tempore*)
- (3) S031423 People v. Sturm (Gregory) [*Automatic Appeal*] (*Gomes, J., assigned justice pro tempore*)
- (4) S063274 In re Thomas (Ralph) on Habeas Corpus (*Elia, J., assigned justice pro tempore*)

WEDNESDAY, DECEMBER 7, 2005—9:00 A.M.

- (5) S136294 Costa v. Superior Court (Lockyer, Real Party in Interest) (*Aldrich, J., assigned justice pro tempore*)
- (6) S124636 People v. Hofsheier (Vincent) (*Fybel, J., assigned justice pro tempore*)
- (7) S036864 People v. Guerra (Jose) [*Automatic Appeal*] (*Gilbert, J., assigned justice pro tempore*)

GEORGE
Chief Justice

Note: In light of the current vacancy on the California Supreme Court, a different justice of the Court of Appeal has been assigned to participate in each case scheduled for argument, pursuant to the court's established alphabetical rotational procedure.

If exhibits are to be transmitted to this court, counsel must comply with rule 18(c) of the California Rules of Court.

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The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

TUESDAY, DECEMBER 6, 2005—2:00 P.M.

(1) Evans v. City of Berkeley, S112621 (Epstein, J., assigned justice pro tempore.) (to be called and continued to the January 10, 2006 oral argument calendar)

#03-39 Evans v. City of Berkeley, S112621. (A097187; 104 Cal.App.4th 1; Superior Court of Alameda County; 809180-4.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Did the City of Berkeley violate the free speech or expressive association rights of the members of the Sea Scouts by terminating the group's rent-free use of space at the Berkeley Marina because of the group's refusal, due to its charter from the Boy Scouts of America, to accept the city's requirement that it agree not to discriminate on the basis of religion or sexual orientation?

(2) Rusheen v. Cohen, S123203 (Flier, J., assigned justice pro tempore.)

#04-45 Rusheen v. Cohen, S123203. (B152948; unpublished opinion; Superior Court of Los Angeles County; EC022640.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Are actions taken to collect a judgment, such as obtaining a writ of execution and levying on the judgment debtor's property, protected by the litigation privilege of Civil Code section 47(b) as communications in the course of a judicial proceeding? (2) Is a claim for abuse

of process based on the filing of an allegedly false declaration of service barred by the litigation privilege on the ground the claim is necessarily founded on a communicative act?

(3) People v. Sturm (Gregory), S031423 [Automatic Appeal] (Gomes, J., assigned justice pro tempore.)

This matter is an automatic appeal from a judgment of death.

(4) In re Thomas (Ralph) on Habeas Corpus, S063274 (Elia, J., assigned justice pro tempore.)

This case, which is related to the automatic appeal in *People v. Thomas* (1992) 2 Cal.4th 489, presents the issue whether defendant's trial counsel provided ineffective assistance of counsel for failure to conduct an adequate investigation, and if so, whether the failure was prejudicial.

WEDNESDAY, DECEMBER 7, 2005—9:00 A.M.

(5) Costa v. Superior Court, S136294 (Lockyer, Real Party in Interest) (Aldrich, J., assigned justice pro tempore.)

#05-179 Costa v. Superior Court, S136294. (C050297; 131 Cal.App.4th 1105; Superior Court of Sacramento County; 05CS00998.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issues: (1) Did the trial court and Court of Appeal correctly determine that the procedural challenge to the initiative measure at issue in this case could and should be resolved prior to the election? (2) Did the trial court and Court of Appeal correctly determine that the discrepancies between the version of Proposition 77 that was submitted to the Attorney General and the version that was circulated for signature warranted removing the initiative measure from the November 8, 2005, special election ballot?

(6) People v. Hofsheier (Vincent), S124636 (Fybel, J., assigned justice pro tempore.)

#04-55 *People v. Hofsheier (Vincent)*, S124636. (H026217; 117 Cal.App.4th 438; Superior Court of Santa Cruz County; F07121.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Does Penal Code section 290 violate the equal protection clause of the state or federal Constitution by requiring a defendant convicted of oral copulation with a minor to register as a sex offender but not requiring such registration by a defendant convicted of unlawful sexual intercourse with a minor?

(7) People v. Guerra (Jose), S036864 [Automatic Appeal] (Gilbert, J., assigned justice pro tempore.)

This matter is an automatic appeal from a judgment of death.